his guidance. Under the New York law, the board of estimate was likewise given full discretionary powers. Perhaps the public welfare requires this discretionary power under the conditions existing in a New York City block, but not with respect to a lone fishing shack on the Connecticut shore. Even so, the two cases represent opposing views on discretionary powers.

Since the above comment went to press, the decision of the Connecticut Supreme Court of Errors in the case of *Town of Windsor v. Whitney et al.* (1920) 111 Atl. 354, has been published. In this case the constitutionality of Rev. St. 1918, secs. 391-395, which provide for the establishment of building lines by a commission on town plans (see note 16 *supra*) was upheld. Justice Wheeler, writing the majority opinion, sustains the establishment of building lines as a valid exercise of the police power. His reasoning proceeds upon the basis that all private property is held subject to regulations that will promote the public welfare and that such regulations do not result in a taking of private property which requires the exercise of the power of eminent domain and the payment of compensation. It seems hardly necessary to state that the writer is heartily in accord with these views. The case is an interesting and proper development of the legal principles involved.

LEGAL PRIVILEGE TO EMPLOY A RUNAWAY SERVANT

It is well settled that the enticement of a servant to commit a breach of his service contract is a tort giving the master a right to damages.[1] The same rule has been laid down in the case of an inducement to commit a breach of a contract, other than that of master and servant, but as to this there is some conflict.[2] There was a long line of cases holding further that it was a tortious act to harbor and employ the runaway servant of another with knowledge of the facts, even in the absence of enticement.[3] In the case of adult servants, however, most of these decisions may be regarded as resting on the Statute of Laborers,[4] a statute passed over 500 years ago in a time of great shortage of labor,

[1] *Lumley v. Gye* (1853, Q. B.) 2 E. & B. 216; see 7 Labatt, *Master and Servant* (1913) ch. 113.

[2] *Jones v. Stanley* (1877) 76 N. C. 355. Cf. *Bourlier Bros. v. Macauley* (1891) 91 Ky. 135, 15 S. W. 60.

[3] *Blake v. Lanyon* (1795, K. B.) 6 T. R. 221; *De Francesco v. Barnum* (1890, Ch.) 63 L. T. 514 (where the rule was held to apply to the employment contract of a ballet girl; and Fry, L. J., said that the repeal of the Statute of Laborers made no difference, in spite of the "very weighty argument of Coleridge, J., in *Lumley v. Gye*"), *Wilkins & Bros. v. Weaver* [1915] 2 Ch. 322. And see 1 Ames & Smith, *Cases on Torts*, 633, note.

[4] (1349) 23 Edw. III, c. 2.

and repealed in 1863. This was the view of Coleridge, J., who dissented in *Lumley v. Gye*. For many years there seems to have been no case in the United States with respect to this tort of harboring, but it has at last arisen in *Shaw v. Fisher* (1920, S. C.) 102 S. E. 325. One Carver was under contract with the plaintiff for one year as a "share cropper" and voluntarily left the plaintiff's employ in breach of his contract, saying that he would rather "die and go to hell" than work longer for the plaintiff. The defendant later employed Carver, with notice of the foregoing facts, and was sued for damages by the plaintiff. It was held that the defendant's act was not a tort, the old tort of harboring a servant being abolished by the 13th and 14th Amendments to the Constitution.

It was the theory of the court that an involuntary servitude would be created if third parties were forbidden to employ a runaway servant. "The result would have been to coerce him to perform labor required by the contract; for he had to work or starve." It may be admitted that certain types of "peonage" may be an involuntary servitude within the meaning of the Constitution, but this case is hardly one of peonage. Perhaps there is such a thing as "wage slavery," but under ordinary circumstances, one who has *voluntarily* contracted to serve another for pay can scarcely be said to be in involuntary servitude. No one suggests *as yet* that it is not wrong to break a contract or that a contract-breaker should not be penalized by a judgment for damages. In cases where money damages are not adequate, a court of equity has frequently issued an injunction restraining a contractor from rendering service for another in breach of his first contract.[5] It may be unsound in policy to grant such an injunction, but it seems not to have been attacked as creating an involuntary servitude. It has seldom if ever been held that a contract of service will be affirmatively enforced by mandatory injunction.[6]

No doubt there are intermediate degrees between slavery and voluntary service, some of which may fall within the constitutional prohibition; but until the federal courts have so decided, the present case should not rest upon such a ground. The Amendments should not be held to create a legal privilege to break a service contract, even upon the payment of damages. The present decision should be sustained upon the ground that the tort of harboring and employing a runaway adult servant rested upon the Statute of Laborers, a statute never properly applicable in the United States, and now repealed in England.[7] Even if such

[5] *Lumley v. Wagner* (1852, Ch.) 1 D., M., & G. 604; *Philadelphia Ball Club v. Lajoie* (1902) 202 Pa. 210, 51 Atl. 973; *Cort v. Lassard* (1889) 18 Ore. 221, 22 Pac. 1054.

[6] But cf. *Southern Cal. Ry. v. Rutherford* (1894, C. C. S. D. Calif.) 62 Fed. 796.

[7] It is interesting to note that many of the southern states enacted legislation at the close of the Civil War, making enticement a crime, and that many of them included the words "knowingly employ" or "knowingly harbor and detain." See

a tort was recognized by the common law this was due to conditions long since passed away. It should now be held that the servant has the legal power of terminating his primary contract relations with his employer (except perhaps in cases of irreparable injury) even though he has not the legal privilege. After definite repudiation by a servant, other persons should be legally privileged to give him employment. Surely this is in accord with the general practice and belief of the community. The instant case really rests upon such modern practice and belief; but to many courts it seems easier to torture statutory words and thus shoulder off the responsibility upon the legislatures for declaring that a change in the law has taken place. A. L. C.

PRIVILEGE OF ALIEN ENEMIES TO INHERIT UNDER TREATY

A distinct contribution to the law has recently been made by Judge Cardozo of the New York Court of Appeals in *Techt v. Hughes* (1920) 229 N. Y. 222, 128 N. E. 185,[1] a decision clearing away much ambiguous terminology and fallacious reasoning with respect to the privilege of alien enemies to inherit realty in New York. The decision involved primarily the construction of the chameleonic term "alien enemy," which, in spite of many important decisions during the war, had still been left obscure and doubtful, and an examination of the extent to which treaty stipulations granting the privilege of inheritance survive the outbreak of war. Both problems are almost without judicial precedent, and the contributions of writers throw but little helpful light upon them.

An American-born woman had in 1911 married in the United States a resident Austrian. On December 7, 1917, war with Austria was declared, and on December 27, 1917, the woman's father, an American citizen, died, leaving real property. Another heir contested the privilege of the woman to inherit, on the ground that she was an alien enemy, whereas the statute of New York confined this privilege to "alien friends." The question for decision, therefore, was (1) whether the American wife of an Austrian subject was during the war an "alien enemy" or an "alien friend" (the Appellate Division had held her to be an "alien friend"[2]) and (2) whether, if she was an "alien enemy," the treaty between the United States and Austria—which contained a stipulation relieving Austrians to some extent from a state statutory disqualification of inheritance—was still in force at the time of her father's death, i. e. after the war had broken out.

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7 Labatt, *Master and Servant* (1913) 8067 ff. These are strictly interpreted, however, and are held not to apply to a case where a man merely gives employment to a laborer during the unexpired term of a broken contract. *Tucker v. State* (1908) 86 Ark. 436, 111 S. W. 275.

[1] Writ of certiorari denied by the United States Supreme Court, October 25, 1920.

[2] (1919) 188 App. Div. 743, 177 N. Y. Supp. 420.